

Bruce T. Beesley

Honorable Bruce T. Beesley
United States Bankruptcy Judge



Entered on Docket
February 19, 2016

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:
ANTHONY THOMAS and WENDI
THOMAS,
AT EMERALD, LLC,
Debtors.

KENMARK VENTURES, LLC
Plaintiff,

v.

ANTHONY THOMAS and WENDI
THOMAS,
Defendants.

Case No. BK-N-14-50333-BTB
Case No. BK-N-14-50331-BTB

Chapter 7

[Jointly Administered]

Adv. Pro. No. 14-5022

**NONDISCHARGEABLE JUDGMENT
AFTER TRIAL**

Nondischargeable Judgment After Trial

1 This Adversary Proceeding came on regularly for bench trial in the above-entitled Court, the
2 Hon. Bruce T. Beesley, U.S. Bankruptcy Judge, presiding. Plaintiff KENMARK VENTURES, LLC
3 and Defendants ANTHONY THOMAS and WENDI THOMAS appeared and were represented by
4 their respective attorneys of record. The Court having heard and considered the evidence, the matter
5 having been argued and submitted for decision, the Court having issued its proposed findings of fact
6 and conclusions of law on the record, good cause appearing, IT IS HEREBY ORDERED,
7 ADJUDGED AND DECREED that:

8 1. The Judgment in Santa Clara Superior Court Case No. 108CV130677 (a copy of
9 which is attached hereto without Exhibits and of which the Court has taken judicial notice) in favor
10 KENMARK VENTURES, LLC against Defendant ANTHONY THOMAS in the amount of Four
11 Million Five Hundred Thousand Dollars (\$4,500,000.00) plus interest at the rate of ten percent
12 (10%) per annum from October 8, 2015, IS HEREBY DECLARED NONDISCHARGEABLE under
13 11 U.S.C. §523(a)(2).

14 2. KENMARK VENTURES, LLC is hereby awarded costs and attorneys' fees in an
15 amount to be established by post-trial motion.

16 Submitted by:

17 /s/ Wayne A. Silver

18 Attorney for Plaintiff,
19 KENMARK VENTURES, LLC

20 **APPROVED/DISAPPROVED**

21 /s/ Jeffrey Cogan

22 Jeffrey Cogan, Esq., attorney for
23 Defendants ANTHONY THOMAS
24 And WENDI THOMAS

25 **RULE 9021 CERTIFICATION**

26 In accordance with Local Rule 9021, counsel submitting this document certifies as follows
(check one):

27 ☐ The court has waived the requirement set forth in LR 9021(b)(1).

28 ☐ No party appeared at the hearing or filed an objection to the motion.

Nondischargeable Judgment After Trial

• Jeffrey Cogan, attorney for Defendant ANTHONY THOMAS and WENDI THOMAS – Approved.

____ I certify that this is a case under chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

Nondischargeable Judgment After Trial

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Attorneys for Plaintiff KENMARK VENTURES, LLC,
a California Limited Liability Company

ENDORSED
FILED

2015 OCT -8 A 9:15

David H. Martinez, Clerk of the Superior Court
County of Santa Clara
By _____ Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

KENMARK VENTURES, LLC, a California
limited liability company,

Plaintiff,
vs.

TONY THOMAS, an individual;
ELECTRONIC PLASTICS, LLC, a Delaware
limited liability company; MICHAEL
GARDINER, an individual; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 108CV130677

STIPULATION FOR JUDGMENT AND
~~PROPOSED~~ JUDGMENT

BY PDF

AND RELATED CROSS-COMPLAINT

RECITALS

WHEREAS, on or about December 19, 2008 Plaintiff Kenmark Ventures, LLC
("Kenmark") filed suit against Defendants Anthony Thomas, Electronic Plastics, LLC, and
Michael Gardner;

WHEREAS, on or about March 20, 2009, Defendant filed its First Amended Complaint
against Defendants Anthony Thomas, Electronic Plastics, LLC, and Michael Gardner alleging,

1 *inter alia*, causes of action for fraud on the alleged basis that Defendant Anthony Thomas as the
 2 sole member of AT Emerald, LLC, and Defendant Michael Gardiner defrauded Kenmark into
 3 loaning \$6,110,000.00 to Anthony Thomas and Electronic Plastics, LLC based on written
 4 misrepresentations and concealments;

5 **WHEREAS**, on or about October 5, 2011, the parties reached a settlement of this action
 6 which they stated on the record before the Court (the "Settlement");

7 **WHEREAS**, a true and correct copy of the transcript of the hearing at which the
 8 Settlement was entered into the record is attached hereto as Exhibit "A";

9 **WHEREAS**, the Settlement, among other things, required Defendants Thomas and
 10 Gardner, jointly and severally to pay Kenmark a total of \$5,000,000 in installments of \$500,000
 11 on January 1, 2013, \$500,000 on January 1, 2014, \$1,000,000 on January 1, 2015, \$1,000,000 on
 12 January 1, 2016, and \$1,000,000 on January 1, 2017, with a five-day grace period for each
 13 payment;

14 **WHEREAS**, Defendants Thomas and Gardner made their first payment under the
 15 Settlement but have not made any further payments within the time specified in the Settlement;

16 **WHEREAS**, the Settlement provides that upon the failure of Defendants Thomas and
 17 Gardner to pay any settlement payment, Kenmark may obtain entry of judgment against

18 Defendants Thomas and Gardner, jointly and severally, on Kenmark's Fourth Cause of Action
 19 for Fraud and Fifth Cause of Action for Fraud;

20 **WHEREAS**, Defendant Thomas has promised to pay \$575,000 toward the stipulated
 21 settlement amount on or before January 30, 2014; and

22 **WHEREAS**, Defendant Thomas's legal name is Anthony as reflected in the transcript of
 23 the October 5, 2011 hearing before this Court that is attached hereto as Exhibit "A".

24 **IT IS HEREBY STIPULATED** by the parties hereto as follows:

25 1. If payment of \$550,000 is not received by Kenmark on or before January 30,
 26 2014, judgment shall hereby be entered in favor of Plaintiff Kenmark Ventures, LLC against
 27 Defendants Anthony Thomas jointly and severally with Defendant Michael Gardner, on
 28 Kenmark's Fourth Cause of Action for Fraud and Fifth Cause of Action for Fraud in the

1 principal sum of \$4,500,000 (four million, five hundred thousand dollars) together with interest
 2 on the judgment thereafter at the rate of 10% per annum, as provided by law.

3 2. The Clerk of the Court is authorized to enter judgment against Defendant
 4 Thomas in his correct legal name of Anthony Thomas rather than Tony Thomas.

5 3. Defendant Thomas authorizes Kenmark to file this Stipulation and to obtain entry
 6 of judgment on an *ex parte* basis.

7 4. This Stipulation is entered into freely and voluntarily. The parties to this
 8 stipulation acknowledge that they have been represented by counsel of their choice, or had the
 9 option to be represented by counsel of their choice, in the negotiations that preceded the
 10 execution of this Stipulation and in connection with the preparation and execution of this
 11 Stipulation. Each party hereto has executed this Stipulation with full knowledge of its
 12 significance and with the express intention of affecting its legal consequence. None of the
 13 parties hereto have relied upon any representation of any other party in signing this Stipulation.

14 5. This Stipulation may be executed in counterparts and executed facsimiles or PDF
 15 files thereof may be used in lieu of the original for all purposes.

16 Dated: January 27, 2014

17
 18 1272
 19 KENMARK VENTURES, LLC, Plaintiff

By: Kenneth Tersini
 Its: Managing Member

20 Dated: January 9, 2014

21
 22 Tony Thomas
 ANTHONY THOMAS, Defendant

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JUDGMENT BY STIPULATION

The Court, having considered the Stipulation of Plaintiff Kenmark Ventures, LLC and Defendant Anthony Thomas, and good cause appearing therefor,

HEREBY ENTERS JUDGMENT in favor of Plaintiff Kenmark Ventures, LLC against Defendant Anthony Thomas, jointly and severally, on Kenmark Ventures, LLC's Fourth Cause of Action for Fraud and Fifth Cause of Action for Fraud in the principal sum of \$4,500,000 (four million, five hundred thousand dollars). This judgment shall accrue interest at the rate of ten percent (10%) per year from the date of entry of this judgment.

The Clerk of the Court is authorized to enter judgment against Defendant Thomas in his correct legal name of Anthony Thomas rather than Tony Thomas.

Dated: OCT 08 2015

WILLIAM J. ELFVING

JUDGE OF THE SUPERIOR COURT

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